IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 4450 of 2007(D)

PETITIONER:

M.R.YADUN, PANACKAL HOUSE,
CHANTHAVILA, P.O.KATTAYIKONAM,
TRIVANDRUM DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

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1. COMMISSIONER FOR ENTRANCE EXAMINATION,
OFFICE OF THE COMMISSIONER FOR ENTRANCE
EXAMINATION, THIRUVANANTHAPURAM.

2. THE PRINCIPAL,
MANNAM AYURVEDIC CO-OPERATIVE MEDICAL COLLEGE,
PANDALAM, PATHANAMTHITTA DISTRICT.

ADDL.3. RISHA T.T., D/O.SIDHEEQUE T.T.,
THATTARA THODI HOUSE,
PONMALA (P.O.), MALAPPURAM DT.

(ADDL.3RD RESPONDENT IS IMPLEADED AS PER ORDER DT.13-2-007 IN I.A.2319/07)

R1 BY GOVT.PLEADER SRI.I.V.PRAMOD.
R2 BY ADV.SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL
R3 BY ADV. SRI.T.K.AJITHKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).4450 OF 2007-D & I.A.2319/2007

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Dated this the 13th day of February, 2007.

JUDGMENT

I.A.2319/2007, a petition for impleadment, is allowed.

2. The petitioner has rank No.45483 for B.A.M.S. course in the common entrance examination conducted by the first respondent for admission to the medical courses for the year 2006. The first respondent is authorised to make allotment to merit seats only till 31-12-2006, going by the extensions granted by the competent authorities. Therefore, no allotment could have been made by the first respondent after 31-12-2006.

3. Ext.P1 is an interlocutory order. That was issued during the previous year when the last date up to which the first respondent could make allotment was 31-10-2005. This

Court had issued directions to let the second respondent in that case, a private college to admit the petitioner in Ext.P1 case. The petitioner herein filed WP(C).No.31207/2006, which was disposed of as per Ext.P2 judgment, holding that it is not in public interest to allow the seats to go waste and therefore, the first respondent was directed as per the said judgment dated 6-12-2006 to verify the merit list and if no other claimant is there above the petitioner, the seat shall be allotted to the petitioner, however, that if any person higher in rank has opted for admission in the said college, then allotment should be given to such person. Apparently, nothing happened on the basis of that judgment and the petitioner moved this Court filing Contempt of Court Case No.9/2007 complaining about the disobedience of Ext.P2 judgment. He also filed WP(C). No.34648/2006 relating to the issue. After hearing parties, this Court directed the first respondent to make a last allotment for the vacancy in the above college within a week from the date of receipt of a copy of that judgment dated 16-1-2007 and if no one above the petitioner in rank opts for it, then the second respondent college should admit the petitioner. It was also made clear that option need not be given to students

already admitted in any college and should be given to those who have not secured admission. Thus, there was a direction to the first respondent to make a last allotment within a week from the date of receipt of a copy of that judgment and if none above the petitioner opts, the second respondent college stood directed to admit the petitioner. Ext.P4 is a receipt issued from the Office of the first respondent showing receipt of copy of Ext.P3 judgment. I say so because, though it is stated in Ext.P4 that what is received is copy of WP(C).No.34648/2006, the stand taken on behalf of the first respondent by the learned Government Pleader is that all that was received is a photo copy of Ext.P3 judgment and not a certified copy thereof. This Court had not directed in Ext.P3 that action should follow on receipt of certified copy. What was directed was to act on a copy of the judgment. It is not in dispute that what was tendered to the first respondent was not a true copy of Ext.P3. Not only that, the first respondent was a party to the proceedings and represented through counsel and it was on a contempt of court case heard along with the writ petition that Ext.P3 judgment was issued. Therefore, I do not find any way for the first respondent to take the stand that he was not

obliged to act on the copy of Ext.P3 judgment which was obtained by his office on 27-1-2007 as evidenced by Ext.P4. If that be so, he ought to have made a last allotment within a week from that date. The power to make such allotment and the direction to make such allotment were not dependent upon the prospectus but on the peremptory directions issued by this Court in Ext.P3 judgment. Admittedly, the first respondent did not make allotment within a week from 27-1-2007. Ext.R3(b) filed along with I.A.2319/2007 would show that the first respondent made allotment to the additional third respondent on 7-2-2007 stating that the said allotment is made on the basis of Ext.P3 order. It is pointed out by the learned counsel for the additional third respondent that the first respondent's office had contacted the additional third respondent over phone and informed her of the availability of an allotment. I am not inclined to disbelieve that version. I would also approve any action taken by the first respondent to act promptly in the matter of carrying out the responsibilities and duties attached to the office of the Commissioner of Entrance Examinations since that should be a paramount consideration of that office. But then, when he made the last allotment on 7-

2-2007 by Ext.R3(b), the first respondent cannot be heard to contend that the admission was made on any earlier point of time. This is because, Ext.R3(b) itself explicitly states that the said allotment is being made and still further, being an office, the first respondent cannot be expected to act otherwise than on records. Therefore, it is plainly clear that Ext.R3(b) allotment was made after the time fixed in Ext.P3 judgment had expired. This means that the second respondent stood directed by the force of Ext.P3 judgment to admit the petitioner. This also means that the right of the petitioner had crystallized in the constitutional writ issued by this Court in the form of Ext.P3. Such right cannot be disturbed.

4. I may notice a very glaring situation before disposing of this case. The petitioner's rank is 45483 for B.A.M.S.course. The additional third respondent's rank is 6556 for B.A.M.S.course. Why she did not get admitted to any of the colleges where Government quota is still left unfilled? Acting on Ext.R3(b), she, who is a student in B.Sc. in Chemistry in Government College, Malappuram, obtained Ext.R3(c) transfer certificate on the next day and has applied

for migration certificate from the University of Calicut. It is now stated that as of now, Government quota seats are available for B.A.M.S. Course in Ayurveda College, Kottakkal, as also in the Santhigiri College, Palakkad, apart from Government Ayurveda College, Thiruvananthapuram and Government Ayurveda College, Kottayam. The additional third respondent, a resident of Malappuram would, obviously, be interested in joining either the Ayurveda College, Kottakkal or the Santhigiri College, Palakkad. The additional third respondent, through counsel, has expressed desire to do so.

5. In the peculiar circumstances of this case and the plight in which the additional third respondent has now been placed following the action taken by the first respondent in issuing Ext.R3(b), it is directed that the additional third respondent shall be given an allotment on the strength of this judgment to either the Ayurvade College, Kottakkal or the Santhigiri College, Palakkad, if merit seats are available there and if merit seats are not available in those colleges, to any other Government College where merit seats are available. The allotment made in favour of the additional third

respondent as per Ext.R3(b) to the Mannam Ayurveda Co-operative Medical College, Pandalam is hereby quashed and it is directed that following the order in Ext.P3 judgment, the second respondent shall admit the petitioner to that college forthwith. A fresh allotment in favour of the third respondent shall be made by the first respondent within a week from now.

The writ petition is allowed in the above terms.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-